

### **REMARKS**

In this Response, claims 16-30 and 42-43 have been amended. Claims 1-44 are currently pending, of which claims 1, 15, 16, 30, 31 and 41-44 are independent. No new matter has been added.

Please note that the Notice of Recordation of Assignment Document enclosed as Exhibit B with the Declaration pursuant to 37 C.F.R. §1.131 is missing page 2.

#### **I. Information Disclosure Statement**

The Examiner asserted that “the listing of references in the specification is not a proper information disclosure statement” (office action, paragraph 3). Applicants are filing a supplemental Information Disclosure Statement in accordance with 37 CFR 1.98(b) herewith.

#### **II. Summary of Claim Rejections**

Claim 29 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite.

Claims 16-28, 29, 30 and 42-43 stand rejected under 35 U.S.C. §101.

Claims 1-44 stand rejected under 35 U.S.C. §102(e) for being anticipated by United States Patent Publication Number 2003/0208480 to Faulkner *et al* (hereafter “Faulkner”). Nonetheless, in view of the Applicants’ Declaration pursuant to 37 C.F.R. §1.131 submitted herewith, Applicants contend the Faulkner reference does not qualify as prior art, which is discussed below.

#### **III. Claim Rejection under 35 U.S.C. §112**

The Examiner rejected claim 29 under 35 U.S.C. §112, second paragraph, as being indefinite because it “claims both an apparatus and the method steps of using the apparatus” (office action, paragraph 5). Applicants have amended claim 29 to recite “The computing device of claim 16” and consider the claim as amended to be in compliance with the provisions of 35 U.S.C. §112, second paragraph. Accordingly, Applicants respectfully request the reconsideration of the 35 U.S.C. §112 rejection and the allowance of claim 29.

**IV. Claim Rejections under 35 U.S.C. §101****A. Claim 29**

The Examiner rejected claim 29 under 35 U.S.C. §101 because “the claim is directed to neither a “process” nor a “machine,” but rather attempts to embrace or overlap two different statutory classes of invention” (office action, paragraph 7). Applicants have amended claim 29 to recite “The computing device of claim 16” and consider the claim as amended to be in compliance with the provisions of 35 U.S.C. §101. Accordingly, Applicants respectfully request the reconsideration of the 35 U.S.C. §101 rejection and the allowance of claim 29.

**B. Claims 16-28, 30 and 42-43**

The Examiner rejected claims 16-28, 30 and 42-43 under 35 U.S.C. §101 as being directed to non-statutory subject matter. More particularly, the Examiner asserted that “claims 16-28, 30, and 42-43, being directed toward computer listings *per se*, fail to fall within a statutory category” (office action, paragraph 9). Applicants have amended claims 16-28, 30 and 42-43 to recite “a computing device,” rather than “a system.” Applicants assert that the amended claims define structural and functional interrelationships between the software and the computing device that allows the software’s functionality to be realized. Accordingly, Applicants consider the amended claims to recite statutory subject matter. Applicants respectfully request the reconsideration of the 35 U.S.C. §101 rejection and the allowance of claims 16-28, 30 and 42-43.

**V. Claim Rejections under 35 USC §102**

The Examiner rejected claims 1-44 under 35 U.S.C. §102(e) as being anticipated by the Faulkner reference. Applicants’ respectfully traverse this rejection on the basis of the Declaration pursuant to 37 C.F.R. §1.131, establishing invention prior to the effective publication date of the Faulkner reference.

Applicants contend that the Faulkner reference is not available as prior art against the present application. The invention as currently claimed was completed by Applicants in this country prior to the publication date of this reference. A sworn statement to this effect, along with supporting evidence, is provided in the enclosed Declaration Under 37 C.F.R. §1.131 signed by an authorized representative of the assignee, Enterasys Networks, Incorporated. In particular, Faulkner reference claims priority to United States Provisional Patent Application Number 60/377,708 which was filed on May 3, 2002. As stated and evidenced in the enclosed Declaration Under 37 C.F.R. §1.131, the inventors of the presently claimed invention had possession of the invention prior to this date. Therefore, this reference is not available as prior art against the claims in the present application.

For at least the foregoing reasons, the presently claimed invention is patentable over the cited reference, and the Examiner is therefore respectfully requested to withdraw the rejection of claims 1-44 under 35 U.S.C. §102(e)..

**CONCLUSION**

In light of the aforementioned arguments, Applicants submit that all of the pending claims 1-44 are in condition for allowance. Should the Examiner feel that a teleconference would expedite the prosecution of this application, the Examiner is urged to contact the Applicants' attorney at (617) 227-7400.

Please charge any shortage or credit any overpayment of fees to our Deposit Account No. 12-0080, under Order No. ENB-009. In the event that a petition for an extension of time is required to be submitted herewith, and the requisite petition does not accompany this response, the undersigned hereby petitions under 37 C.F.R. §1.136(a) for an extension of time for as many months as are required to render this submission timely. Any fee due is authorized to be charged to the aforementioned Deposit Account.

Dated: May 21, 2007

Respectfully submitted,

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